

1 THE HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.  
13 JUSTIN ERIN CRITCHELL,

14 Defendant.

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18 No. CR-20-0086-RAJ  
19 ORDER ON MOTION FOR  
20 RECONSIDERATION OF ORDER  
21 DENYING MOTION TO REOPEN  
22 BOND  
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## I. INTRODUCTION

25 This matter comes before the Court on Defendant Justin Critchell’s (“Mr.  
26 Critchell”) Emergency Motion for Reconsideration of the Court’s Oral Order Denying  
27 Defendant’s Motion to Reopen Bond. Dkt. # 96. Having considered the motion, the  
28 Government’s response, Dkt. # 98, Mr. Critchell’s reply, Dkt. # 99, and supplement, Dkt.  
# 101, the Court **DENIES** the motion.

## II. DISCUSSION

Motions for Reconsideration are usually disfavored and will be granted only upon  
“a showing of manifest error in the prior ruling or a showing of new facts or legal  
authority which could not have been brought to [the Court’s] attention earlier with

1 reasonable diligence.” Local Rules W.D. Wash. LCR 7(h)(1). Mr. Critchell claims that  
 2 the motion is warranted based on new facts that he could not have brought to the Court’s  
 3 attention when he filed the motion to reopen bond. He also raises legal arguments that  
 4 the Court has already rejected. The Court will consider the new facts raised by Mr.  
 5 Critchell and the Government, but it will not reconsider arguments it has already  
 6 addressed in its prior orders.

7 **A. New Facts Raised**

8 In his emergency motion filed on December 8, 2020, Mr. Critchell indicates that  
 9 new positive cases of COVID-19 were discovered at the Federal Detention Center  
 10 (“FDC”) including within Mr. Critchell’s housing unit. *Id.* Mr. Critchell also notes that  
 11 his medical records, disclosed by the Government prior to the show cause hearing  
 12 but without sufficient time for Mr. Critchell’s counsel to review them in their entirety,  
 13 reveal that he suffers from hypertension and obesity and is, therefore, particularly  
 14 vulnerable to “contracting the virus, being hospitalized, and dying from it.” *Id.* at 3.  
 15 Finally, Mr. Critchell notes that his recent discovery that pretrial services did not agree to  
 16 release him to the halfway house or residential reentry center pending trial due to cost  
 17 concerns violates 18 U.S.C. § 3154(4) and raises constitutional concerns. *Id.* at 7.

18 In its response filed on December 15, 2020, the Government reported that Mr.  
 19 Critchell had tested positive after he filed his motion for reconsideration. Dkt. # 98 at 3-  
 20 4. The Government indicated that he remains asymptomatic and is currently housed in  
 21 isolation to minimize the spread of the virus. *Id.* at 4. The Government also noted an  
 22 increase in the number of FDC inmates and employees who have tested positive for the  
 23 virus. *Id.* The Court notes that the most recently available information at the time of this  
 24 Order indicates that 133 inmates and 8 staff have tested positive at the FDC and that there  
 25 have been 48 recoveries in total and no deaths.<sup>1</sup>

26 In Mr. Critchell’s reply, he proffers new information for the Court’s consideration.

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 28 <sup>1</sup> <https://www.bop.gov/coronavirus/index.jsp>

1 On December 17, 2020, Mr. Critchell’s counsel learned through an email from FDC staff  
2 that counsel would not be able to schedule an appointment with Mr. Critchell until  
3 January 4, 2021 because of “unforeseen circumstances.” Dkt. # 99 at 6. Defense  
4 Counsel later notified the Court that the legal office for the FDC noted that Mr. Critchell  
5 “will be available for legal calls the week of December 28.” Dkt. # 101 at 1. Because  
6 Mr. Critchell may be denied access to counsel until January 4, 2021, he argues that the  
7 Court should dismiss the Indictment without prejudice under the Court’s inherent  
8 supervisory powers. *Id.* If the Court chooses not to dismiss the Indictment, Mr. Critchell  
9 requests “immediate and temporary release to the halfway house or the residential reentry  
10 center . . . so that [he] may be afforded a reasonable opportunity to communicate with his  
11 counsel to prepare for his trial on February 8, 2021.” *Id.* at 7. Additionally, Mr. Critchell  
12 requests an evidentiary hearing to resolve material disputes, such as his weight and  
13 whether the FDC is equipped to provide medical treatment, if the Court denies his motion  
14 for reconsideration. *Id.* at 1, 6. The Court will address these facts in turn.

15 **B. Spread of COVID-19 at the FDC**

16 The increase of coronavirus cases in the FDC is, unfortunately, not unique to the  
17 institution; it is happening in King County and across the country. *See* Dkt. # 97 at 2  
18 (order continuing trial date). Regardless, Mr. Critchell’s concern over the escalating risk  
19 of contracting coronavirus has become moot because he has now tested positive. With  
20 respect to the FDC’s ability to care for Mr. Critchell, he provides no evidence to show  
21 that the FDC is “not equipped to provide medical treatment.” Dkt. # 99 at 6. Further  
22 mooting his concern is the fact that Mr. Critchell is an asymptomatic 39-year-old,  
23 seemingly removing him from the highest-risk category. Indeed, this fact diminishes the  
24 alleged urgency to be released because Mr. Critchell is now at a significantly lower risk  
25 of contracting the virus again. The Court finds that these facts do not warrant  
26 reconsideration of its order.

27 **C. Constitutional Concerns over Cost Consideration of Alternative Detention**

1           Mr. Critchell claims that pretrial services violated 18 U.S.C. § 3154(4) and  
 2 potentially the Constitution by refusing to release him to the halfway house or a  
 3 residential reentry center pending trial due to financial concerns. *Id.* at 7. This argument  
 4 is unavailing. The Court's decision was not based on the cost of detention in alternative  
 5 facilities. Over and again, the Court has underscored that Mr. Critchell's continual  
 6 detention is based on his risk of non-appearance and his history of violence and criminal  
 7 activity. These are the key—and only—determinants in maintaining his detention at the  
 8 FDC. The Court finds that the question of a financial obstacle to alternative custody is  
 9 irrelevant and does not warrant reconsideration of its prior decision.

10           **D. Denial of Access to Counsel**

11           Finally, the only new fact that remains is the suspension of Mr. Critchell's contact  
 12 with his counsel. The Court finds that the suspension of access to counsel for one to two  
 13 weeks is insufficient to hamper pre-trial preparation and warrant dismissal of the  
 14 Indictment and temporary release. Indeed, trial was continued only ten days before it was  
 15 scheduled to begin, and trial preparation should have been well underway. Even if  
 16 defense counsel is unable to contact Mr. Critchell until January 4, 2021, they would still  
 17 have over a month to prepare for the February 8, 2021 trial date. The Court does not find  
 18 this new fact compelling enough to warrant reconsideration.

19           **III. CONCLUSION**

20           The Court finds that the new facts presented by the parties are insufficient to  
 21 warrant reversal of the Court's prior decision on bond. For the above reasons, the Court  
 22 **DENIES** the Motion for Reconsideration of Order Denying Motion to Reopen Bond.

23           Dkt. # 96.

24           DATED this 22nd day of December, 2020.

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28           The Honorable Richard A. Jones  
 United States District Judge